

Hon. Lyndon B. Johnson then addressed the joint session.

At the conclusion of the address, the President announced the business of the joint session completed and requested the Senators to repair to the Senate Chamber.

#### In the Senate

The President called the Senate to order at 12:05 o'clock p. m.

#### Pages Excused

On motion of Senator Chadick, and by unanimous consent, the pages of the Senate were excused for this afternoon.

#### Bill Signed

The President signed in the presence of the Senate, after its caption had been read, the following enrolled bill:

S. B. No. 433, A bill to be entitled "An Act authorizing any city or county of the State, acting separately or jointly, to acquire lands for the use of the United States Government, either by lease for a term of years or in fee simple title; authorizing the appropriation of any available funds of any such city or county for the payment of such lands; authorizing the issuance of time warrants in payment thereof; authorizing the condemnation of lands for such purpose, either for a period of years or in fee simple; authorizing the taking of possession of said lands, immediately after filing condemnation suit, upon depositing with the county clerk the amount of money estimated by the commissioners' court or city council of the city or county involved to be just compensation for the interest taken; providing for the deposit of any additional amount found by the special commissioners in condemnation where the compensation found to be just is greater than the amount fixed by the commissioners' court; authorizing any such city or county to contract with the United States Government or its agencies, obligating itself to acquire lease-hold interest or fee simple title in land and validating any such agreement heretofore executed by any such city or county with the United States Government; providing that unconstitutionality of any part of the law shall not invalidate the remainder; and declaring an emergency."

#### Adjournment

Senator Moore moved that the Senate adjourn until 10:00 o'clock a. m. tomorrow.

Senator Metcalfe moved that the Senate recess until 2:00 o'clock p. m. today.

Question first recurring on the motion to adjourn, yeas and nays were demanded.

The motion to adjourn prevailed by the following vote:

#### Yeas—13

Brownlee	Lovelady
Cotten	Mauritz
Fain	Moore
Formby	Ramsey
Isbell	Stone
Lanning	Van Zandt
Lemens	

#### Nays—8

Aikin	Metcalfe
Chadick	Moffett
Graves	Sulak
Hazlewood	Vick

#### Absent

Beck	Smith
Hill	Weinert
Kelley	York
Shivers	

#### Absent—Excused

Martin	Winfield
Spears	

The Senate, accordingly, at 12:10 o'clock p. m., adjourned until 10:00 o'clock a. m. tomorrow.

#### FIFTY-EIGHTH DAY

(Tuesday, April 22, 1941)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Stevenson.

The roll was called, and the following Senators were present:

Aikin	Hazlewood
Beck	Hill
Brownlee	Isbell
Chadick	Kelley
Cotten	Lanning
Fain	Lemens
Formby	Lovelady
Graves	Martin

Mauritz	Stone
Metcalfe	Sulak
Moffett	Van Zandt
Moore	Vick
Ramsey	Weinert
Shivers	Winfield
Smith	York

Absent—Excused

Spears

A quorum was announced present.

Rev. S. B. Culpepper, Chaplain, offered the invocation.

On motion of Senator Aikin and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

#### Leave of Absence Granted

Senator Spears was granted leave of absence for today on account of important business, on motion of Senator Graves.

#### Report of Standing Committee

Senator Lanning submitted the following report:

Committee Room,  
Austin, Texas,  
April 23, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: We, your Committee on Highways and Motor Traffic, to whom was referred

H. C. R. No. 96, A resolution by the House of Representatives, the Senate concurring, that the State Highway Department of Texas be authorized to lend the City of Mineral Wells sufficient quantities of the discarded wire in Palo Pinto and other nearby counties to enable them to provide the needed wire for Lake Mineral Wells; the said wire to be returned to the State Highway Department if and when requested.

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

BROWNLEE, Chairman.

#### Message from the House

The Assistant Reading Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives,  
Austin, Texas,  
April 22, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has reconsidered the vote by which the House concurred in Senate amendments to H. B. No. 405, and the House refused to concur in Senate amendments to H. B. No. 405 and has requested the appointment of a Conference Committee to consider the differences between the two Houses and appoints Bruhl, Phillips, Senterfitt, McLelland and Duckett.

Respectfully submitted,

E. R. LINDLEY,  
Chief Clerk, House of Representatives.

#### Senate Resolution 101

Senator Graves offered the following resolution:

Whereas, There is present at the Bar of the Senate of the State of Texas at this time a large delegation of the entire Graduating Class of Tivy High School of Kerrville, Texas; which school delegation is ably headed by Mr. H. C. Moore, Supt. of Tivy High School with the assistance of Mr. James Swan, Professor of said school; now, therefore, be it

Resolved, That Mr. H. C. Moore, Mr. James Swan, and delegation be extended the privilege of the floor of the Senate of Texas at this time.

SPEARS,  
GRAVES.

The resolution was read.

On motion of Senator Graves, and by unanimous consent, the resolution was considered at this time and was adopted.

#### Signing of Bills and Resolutions

The President signed in the presence of the Senate, after their captions had been read, the following enrolled bills and resolutions:

H. B. No. 78, A bill to be entitled "An Act to provide for agreements between the commissioners' court of any county in this State, for and on

behalf of the county and political subdivisions thereof, and the United States, relative to resettlement of rural rehabilitation projects, and providing for the payment by the United States to the county of sums in lieu of taxes; defining the duties of the county treasurer pertaining to such agreement and to the apportionment of payments from the United States thereunder; prescribing the method of determining the sums of money to be paid by the United States in lieu of taxes; providing for the depositing of moneys received from the United States and defining terms."

H. B. No. 110, A bill to be entitled "An Act to create and dedicate a State Park in the County of Cherokee, two (2) miles Northeast of the Town of Rusk, to include the homestead of General Joseph L. Hogg, the birthplace of Governor James Stephen Hogg, such as now owned by the descendants of James Stephen Hogg and the Town of Rusk and such adjacent land as may be acquired by the State Parks Board by donation as a part of the park to be established, said park to be known as the Jim Hogg Memorial Park; providing for commissioners to serve without pay; and providing an appropriation; and declaring an emergency."

H. B. No. 286, A bill to be entitled "An Act to protect and preserve the political right and freedom, right and status of any and all persons employed, on/or to be on leave of absence, or in military service of the United States, by any person, firm, corporation or association of persons, by regulating in certain particulars the rights and relationships between such employers and employees with respect to political affairs, reinstatement and/or reemployment in former position with employer, defining the term 'Employer of Labor'; providing fines and penalties for the violation of this Act; and repealing all laws or parts of laws in conflict herewith, making a separability provision; and declaring an emergency."

H. B. No. 398, A bill to be entitled "An Act to amend Article 1107, Title 28, of the Revised Civil Statutes of the State of Texas of 1925, as amended by Act of the Forty-second Legislature, Chapter 250, page 417, adding Section 6, providing that a city or town shall have the right

of eminent domain to condemn private property for the purpose of digging or drilling thereon water wells or producing water therefrom or constructing pump stations or reservoirs; and providing that if any portion of the Act be declared unconstitutional or invalid, the remainder shall not be affected thereby; and declaring an emergency."

H. B. No. 489, A bill to be entitled "An Act providing that in counties having a population of not less than thirty-one thousand, five hundred (31,500) and not more than thirty-two thousand (32,000), according to the last preceding Federal Census, the provisions of Article 6869, Revised Civil Statutes of Texas, of 1925, as amended insofar as such limits the number of deputies allowable to sheriffs shall not apply, but the sheriff in any such county shall have the number of deputies allowed him by the commissioners' court of such county; and declaring an emergency."

H. B. No. 529, A bill to be entitled "An Act fixing the compensation of county commissioners in all counties with a population of not less than twenty thousand, three hundred (20,300) nor more than twenty thousand, four hundred and sixty (20,460) inhabitants, according to the last available Federal Census as same now exists or may hereafter exist, and in counties with a population of not less than twenty-two thousand, five hundred (22,500) nor more than twenty-three thousand, three hundred (23,300) inhabitants, according to the last available Federal Census as same now exists or may hereafter exist; repealing all laws in conflict herewith; and declaring an emergency."

H. B. No. 631, A bill to be entitled "An Act amending Chapter 10, Special Laws, Forty-fourth Legislature, Regular Session, as amended in H. B. No. 30, 'Title: Stock Laws,' Chapter 1, Acts of the Forty-sixth Legislature, Regular Session, making Clay County eligible to the provisions of this Act; and declaring an emergency."

H. B. No. 749, A bill to be entitled "An Act to amend Section 1 of Article 4032a of the Penal Code of the State of Texas, the same being Chapter 227, Section 1, page 381, Acts of the Forty-second Legislature, so

as to provide means by which the soldiers stationed in Texas under the National Defense Act, and others may be permitted to enjoy fishing in salt water without the payment of non-resident fishing license and artificial lure license; and declaring an emergency."

H. B. No. 759, A bill to be entitled "An Act fixing the compensation of tax assessor-collector in all counties having a population of more than seventy thousand (70,000) and not more than eighty thousand (80,000) according to the last preceding Federal Census, and with an assessed valuation of more than Forty Million (\$40,000,000.00) Dollars; repealing all laws, or parts of laws in conflict herewith; and declaring an emergency."

H. C. R. No. 59, Providing for a monthly allowance in the grants given to old age assistance recipients for the specific purpose of paying for burial insurance policies.

H. C. R. No. 64, Granting J. H. Ferrel, Trustee, permission to make the State of Texas a party defendant in a suit to foreclose vendor's lien against a certain lot in Abilene.

H. C. R. No. 84, Granting James ("Jim") I. Morgan permission to bring suit against the State of Texas.

#### House Concurrent Resolution 96

On motion of Senator Lanning and by unanimous consent, the regular order of business was suspended, to permit consideration of H. C. R. No. 96 at this time.

The President laid before the Senate for consideration at this time:

H. C. R. No. 96, Authorizing the State Highway Department of Texas to lend to the City of Mineral Wells sufficient quantities of discarded wire to protect the fish of Lake Mineral Wells.

The resolution was read and was adopted.

#### Senate Resolution 102

Senator Lemens offered the following resolution:

Whereas, The David Graham Hall Foundation and Texas Social Hygiene Association have invited the members of the Senate and House of Represen-

tatives to attend a special showing of the picture, "The Magic Bullet" starring Edward G. Robinson portraying the life of the late eminent scientist and Nobel Prize Winner, Dr. Paul Erlick, at the Paramount Theatre in Austin, Texas, Wednesday, April 23, 1941 at 8:00 a. m.; and

Whereas, Such picture will last approximately one hour and thirty minutes; and

Whereas, It is a picture of unusual educational importance and value and should be viewed by as many as possible; now, therefore, be it

Resolved by the Senate, That the employees of the Senate, who may desire to attend said picture, be excused until 9:50 a. m. on the morning of April 23, 1941.

The resolution was read.

On motion of Senator Lemens, and by unanimous consent, the resolution was considered immediately and was adopted.

#### Senate Resolution 103

Senator Kelley offered the following resolution:

Whereas, The National Tuberculosis Association will hold its 37th annual meeting in San Antonio, Texas, May 5th to 8th, 1941; and

Whereas, At this meeting leading medical authorities throughout the United States, Canada, and Central and South American countries will discuss measures for the prevention, treatment and cure of tuberculosis; and

Whereas, The Forty-seventh Legislature desires to lend its support to all efforts to reduce the toll from this dread disease in our State and Nation; therefore, be it

Resolved, That members of this Legislature who can be officially excused at any time between the dates of May 5th and 8th, accept the invitation of Dr. H. Frank Carman, Representative Director from Texas on the Board of the National Tuberculosis Association, to attend any or all sessions of this meeting in San Antonio.

The resolution was read, and on motion of Senator Kelley and by unanimous consent, it was considered immediately and it was adopted.

### Conference Committee on House Bill 405

Senator Brownlee called up from the President's table, for consideration at this time, the request of the House for a Conference Committee on H. B. No. 405.

Senator Brownlee moved that the request of the House be granted.

The motion prevailed.

Accordingly, the President appointed the following conferees on the bill on the part of the Senate: Senators Brownlee, Sulak, York, Stone and Kelley.

### Conference Committee on House Bill 247

Senator Metcalfe called up from the President's table, for consideration at this time, the request of the House for a Conference Committee on H. B. No. 247.

Senator Metcalfe moved that the request of the House be granted.

The motion prevailed.

Accordingly, the President appointed the following conferees on the bill on the part of the Senate; Senators Metcalfe, Fain, Hazlewood, Graves and Formby.

### Senate Resolution 104

Senator Fain offered the following resolution:

Whereas, on Monday, April 21, 1941, His Excellency, W. Lee O'Daniel, Governor of the State of Texas, appointed General Andrew Jackson Houston to succeed the late lamented and beloved Morris Sheppard as United States Senator from the State of Texas; and

Whereas, The Honorable Andrew Jackson Houston is a distinguished citizen of Texas, an eminent scholar and a renowned soldier; and

Whereas, The Honorable Andrew Jackson Houston is the only living son of General Sam Houston, Liberator of Texas, the Victor of San Jacinto, President of the Republic of Texas, United States Senator from Texas, and twice Governor of the State of Texas; now, therefore, be it

Resolved by the Senate of Texas, That the Governor of Texas, in honoring General Andrew Jackson Houston with appointment to be United States Senator from Texas, has singularly honored one of its noble, native sons

and has thereby honored the citizenry of Texas generally, and has by this appointment, paid honor and tribute to the memory of the revered Sam Houston, and has afforded on this the One Hundred Fifth Anniversary of the Battle of San Jacinto an opportunity to every Texan to glory in the patriotism and sacrifices of Sam Houston in establishing an enduring empire; and, be it further

Resolved, That the Senate of Texas congratulate His Excellency, Governor W. Lee O'Daniel, upon this splendid appointment, and congratulate General Andrew Jackson Houston upon his appointment, and that a copy of this resolution be mailed to the Honorable Andrew Jackson Houston, United States Senator from Texas, and to His Excellency, the Governor of Texas.

The resolution was read.

Senator Fain moved that the resolution be considered immediately.

The motion was lost by the following vote:

#### Yeas—11

Aikin	Kelley
Brownlee	Moffett
Chadick	Moore
Fain	Stone
Hazlewood	Sulak
Isbell	

#### Nays—17

Beck	Mauritz
Cotten	Metcalfe
Formby	Shivers
Graves	Smith
Hill	Van Zandt
Lanning	Vick
Lemens	Weinert
Lovelady	Winfield
Martin	

#### Absent

Ramsey	York
--------	------

#### Absent—Excused

Spears

The resolution was transmitted to the President's desk.

### Bills and Resolutions Signed

The President signed in the presence of the Senate, after their captions had been read, the following enrolled bills and resolutions:

H. B. No. 80, A bill to be entitled "An Act providing for the employ-

ment in all counties having a population of not less than three hundred and twenty thousand (320,000) nor more than three hundred and fifty thousand (350,000), according to the last preceding Federal Census, of two (2) rural school supervisors; prescribing the qualifications and duties of said supervisors and defining their powers; providing the compensation to be paid to such supervisors and the method of paying same; providing the County Board of School Trustees shall have the power to discontinue the office of such supervisors whenever advisable; providing that in compliance with this Act in any of the counties affected hereby shall exempt the county superintendent from holding a Teachers Institute, and shall exempt the teachers from attending Teachers Institute, as now required by Article 2691, Revised Civil Statutes, of Texas, 1925, as amended; and declaring an emergency."

H. B. No. 235, A bill to be entitled "An Act amending Section 6 of S. B. No. 481, being Chapter 185 of the Acts of the Forty-second Legislature, Regular Session, page 311 (1931); appropriating examination fees provided for in said Act to Special Land Board for the purpose of defraying all expenses incident to the enforcement of said Act; providing for the drawing of warrants by the Comptroller on requisition of the Commissioner of the General Land Office; transferring any sum remaining to the Permanent School Fund; providing that the amount accruing to the State of Texas for the sale of land under said Act shall be placed to the credit of the Permanent School Fund; and declaring an emergency."

H. B. No. 288, A bill to be entitled "An Act to authorize the county commissioners of any county having a county court at law to appoint an official interpreter for the county court at law in such county; to provide for the salary of such interpreter and to prescribe his duties and providing for the oath of such interpreter."

H. B. No. 359, A bill to be entitled "An Act to amend Article 392, Revised Civil Statutes of 1925, as amended by Acts 1937, Forty-fifth Legislature, page 1296, Chapter 482, Section 1; and declaring an emergency."

H. B. No. 371, A bill to be entitled "An Act authorizing independent school districts and cities which have assumed the control public schools situated therein to build or purchase buildings and grounds located within or without the district or city, for the purpose of constructing gymnasias, stadia, or other recreational facilities, and to mortgage and encumber the same, and the income thereof, and to evidence the obligation therefor by the issuance of bonds to secure the payment of funds to purchase or construct or to purchase and construct the same; providing that the purchaser shall have a franchise to operate same in case of foreclosure; providing that no such obligation shall ever be a debt of any such school district or city; but solely a charge upon the property so encumbered; providing that no election for the issuance of such bonds shall be necessary; providing that such project shall be deemed self-liquidating in character, etc.; and declaring an emergency."

H. B. No. 434, A bill to be entitled "An Act relating to marks and brands of livestock in Austin County only; amending Article 6899 of the Revised Civil Statutes of Texas, by adding thereto a new Section to be known as Article 6899f requiring that in said county each owner of any livestock mentioned in Chapter 1, of Title 121 of the Revised Civil Statutes of Texas, of 1925, shall within six (6) months after this Act takes effect, have his mark and brand of such stock recorded at the office of the county clerk of said county; and providing that such owners shall so record such marks and brands whether heretofore recorded or not and that after the expiration of six (6) months from taking effect of this Act all records and marks and brands now in existence shall no longer have any force or effect and that after the expiration of six (6) months only the records made after this Act shall be effective and considered the recorded marks and brands in said county; and further providing that the county clerk of said county shall publish this Act in some newspaper in general circulation in the county for a period of thirty (30) days; and declaring an emergency."

H. B. No. 709, A bill to be entitled "An Act providing in all counties

having a population of not less than twenty-nine thousand, two hundred and forty (29,240) and not more than twenty-nine thousand, two hundred and fifty (29,250), according to the last preceding, or any future United States Federal Census, there shall be imposed upon all male persons the duties of working five (5) days of eight (8) hours efficient service on public roads each year, or the payment on or before May 1st of each year the sum of Three (\$3.00) Dollars; providing for the summons of persons in said counties for work on the public roads, said summons when issued shall compel the persons to appear the following day after summons for road duty; fixing age bracket for persons to be summoned; repealing all laws in conflict herewith; and declaring an emergency."

H. B. No. 804, A bill to be entitled "An Act providing for issuing refunding bonds where the original bonds are now owned by two or more school entities, including common school districts, independent school districts, and cities which have assumed control of their schools or which constitute independent school districts."

H. B. No. 855, A bill to be entitled "An Act providing (1) an open season for quail in Henderson County from December 1 in one year to January 16 in the following year, both days inclusive; (2) that it shall be lawful to kill quail in Henderson County on Monday, Wednesday and Friday of each week, after the first day of December, 1941, and continuing until and including the 16th day of January, 1942, etc.; and declaring an emergency."

H. C. R. No. 67, Granting permission to J. L. Kelley and wife to bring suit against the State of Texas.

H. C. R. No. 68, Granting Dr. J. R. Nichols and wife permission to sue the State.

**Committee Substitute House Bill 8  
on Second Reading  
(Special Order)**

The President laid before the Senate, as a special order for this hour, on its second reading and passage to third reading:

C.S.H.B. No. 8, A bill to be entitled "An Act levying various taxes and

providing certain revenue for the payment of old age assistance, aid to destitute children, aid to needy blind, and the obligations of the State under the Teachers' Retirement Act; amending Section 2 of Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, and levying certain taxes on persons making the first sale in this State of cigarettes and providing for the collection and administration thereof; amending Section 2 of Article 7057a of the Revised Civil Statutes of Texas, 1925, same being Section 2, Chapter 162, Acts of the Forty-third Legislature, Regular Session, 1933, as amended by Acts of the First Called Session of the Forty-third Legislature, 1933, Chapter 12, Section 1, as amended by Acts of the Third Called Session of the Forty-fourth Legislature, 1936, Chapter 495, Article 4, Section 4, levying certain occupation taxes on oil produced within this State, defining certain terms in connection therewith, establishing the liability thereof, and providing for the computation, collection, and administration thereof; amending Section 3, Chapter 75, Acts of the Regular Session of the Forty-second Legislature, as amended by Acts of the Third Called Session of the Forty-fourth Legislature, Chapter 495, Article 4, Section 8, levying certain taxes on the market value of gas produced and saved within this State, or sold if imported into this State; defining certain terms in connection therewith, establishing the liability thereof, and providing for the computation, collection, and administration thereof; amending Section 40A of Article 7047, Revised Civil Statutes of Texas, 1925, as amended by Acts of 1931, Forty-second Legislature, Regular Session, Page 355, Chapter 212, Section 1, as amended by Acts of 1936, Forty-fourth Legislature, Third Called Session, page 2040, Chapter 493, Article 4, Section 6, levying certain taxes against producers of sulphur within this State, and providing for the computation, collection, and administration thereof; etc.; and declaring an emergency."

The bill was read second time.

Senator Moore offered the following amendment to the bill:

(1)

Amend the mimeographed copy of the committee substitute for H. B. No. 8, page 3, line 15, as follows:

By adding after the word "gas" appearing at the end of line 15, page 3, the following words: "produced in another state and."

Lines on page 3 counted by beginning with "H. B. No. 8" as line "1", and "Article II" as line "2" and so on down the page.

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(2)

Amend the mimeographed copy of the committee substitute for H. B. No. 8, page 3, line 20, as follows:

By inserting between the words "if" and "imported" line 20, page 3, the following: "produced in another state and."

Lines on page 3 counted by beginning with "H. B. No. 8" as line "1", and "Article II" as line "2" and so on down the page.

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(3)

Amend C. S. H. B. No. 8 by striking out Article III, page 15, and substituting in lieu thereof a new Article III reading as follows:

### "ARTICLE III

"Section 1. In addition to other taxes, there is also levied a tax on the business of first transporting commingled gases, which tax shall be calculated on the basis of one-tenth (1/10) of one (1c) cent per one thousand (1,000) cubic feet of all such gases first transported in intrastate commerce in this State.

"Sec. 2. Every person who shall simultaneously transport sweet gas and sour gas or sweet gas and casing-head gas in the same pipe line in such a manner as to mix or commingle the said gases so that the volume of each type of gas cannot be measured separately at destination shall be deemed to be engaged in the business of transporting commingled gases and, if the first transporter thereof, shall

be liable for the tax imposed in this Article; the tax levied in this Article, however, is levied only on the first transporter and the first transportation of such commingled gases.

"Sec. 3. The tax hereby levied shall be the liability of the first transporter. In all other respects the terms and provisions of Article II of this Act shall govern the taxpayer and the officers of this State in paying and collecting the tax herein imposed and enforcing penalties for delinquency of tax payment.

"The definitions set forth in Article II of this Act shall apply to this Article.

"Sec. 4. The tax herein levied being strictly an occupation or privilege tax for the privilege of engaging in such business of first transporting commingled gas shall in no case be deducted from any payments due by purchasers to sellers of gas, under the provisions of any contracts in which the seller agrees to pay taxes levied upon the gas.

"Sec. 5. The tax levied by this Article shall be allocated as hereinafter set forth in this Act."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(4)

Amend Article VI, C. S. H. B. No. 8, Section 1, subdivision 1, page 26, by substituting the word, "and" for the word, "or" between the words, "telephone" and "telephones."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(5)

Amend Article VI, C. S. H. B. No. 8, Section 1, subdivision 2, page 27, by inserting the words, "or not prohibited" between the words, "provided" and "by law."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(6)

Amend Article VII, Section 1, C. S. H. B. No. 8, page 28, by inserting the words, "more than" immediately preceding the words, "one thousand (1,000) inhabitants."

The amendment was adopted.



Senator Moore offered the following amendment to the bill:

(7)

Amend Article VII, Section 1, C. S. H. B. No. 8, page 29, by adding at the end of the first paragraph of Article 7060, the following:

"Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation or association, and distributed by another, the tax shall be paid by the distributor alone."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(8)

Amend Article IX, Section 1, subdivision (a), page 39 of C. S. H. B. No. 8, by inserting the word "on" after the words "per gallon."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(9)

Amend Article XIII, C. S. H. B. No. 8, page 55, by adding thereto a new Section to be known as Section 2 and reading as follows:

"Section 2. The tax levied in this Article shall be allocated as hereinafter provided in this Act."

The amendment was adopted.

Senator Van Zandt offered the following amendment to the bill:

(10)

Amend Article XV, Section 1, C. S. H. B. No. 8, line 9, page 80, of the mimeographed bill by inserting after the words "each motor bus company" and before the word "and" the following:

"As defined in Chapter 270, Acts Regular Session of the Fortieth Legislature, as amended by the Acts of 1929, First Called Session of the Forty-first Legislature, Chapter 78."

The amendment was adopted.

Senator Van Zandt offered the following amendment to the bill:

(11)

Amend Article XV, Section 1, C. S. H. B. No. 8, of the mimeographed bill by inserting at the end of Section 1 thereof the following:

"Provided, however, that Electric Interurban Railway Corporations are

exempt from the provisions of this Article."

The amendment was adopted.

Senator Hill offered the following amendment to the bill:

(12)

Amend H. B. No. 8, Article XV, Section 1, line 8, after the words "transportation of oil and" by inserting thereafter the words "in addition,"

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(13)

Amend Article XX, Section 1, page 165 of H. B. No. 8, by striking out the word, "and" where such appears immediately after the words, "occupation tax measured by gross receipts;" and inserting in lieu thereof the word, "or."

The amendment was adopted.

Motion to Recess

Senator Metcalfe moved that the Senate recess to 2:00 o'clock p. m. today.

The motion was lost.

Senator Moore offered the following amendment to the bill:

(14)

Amend Article XX, Section 1, page 165 of H. B. No. 8, by striking out the word, "and" appearing immediately after the words "products of their own manufacture only;" and inserting in lieu thereof only;" and inserting in lieu thereof the word, "or."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(15)

Amend Article XX, Section 1, page 165 of H. B. No. 8, by striking out the word, "and" appearing immediately after the words, "retail of such products;" and inserting in lieu thereof the word, "or."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(16)

Amend Article XX, H. B. No. 8, page 166a, by adding thereto a new

Section to be known as Section 3 and reading as follows:

"Section 3. The taxes levied by this Article shall be allocated as now provided by law for such taxes."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(17)

Amend Article XXI, Section 2, un-numbered paragraph two of such Section, page 167 of H. B. No. 8, by striking out "IX" and substituting in lieu thereof "IX (subdivision a)"

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(18)

Amend Article XXI, Section 2, un-numbered paragraph three of such Section, page 167 of H. B. No. 8, by striking out "IX" and substituting in lieu thereof "IX (subdivision a)"

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(19)

Amend Article XXI, H. B. No. 8, page 169, in the next to the last paragraph of subdivision (4) of Section 2 thereof by striking out the words "as to" in the third line of such paragraph.

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(20)

Amend H. B. No. 8, Article XXII by striking out Section 8 thereof and inserting in lieu a new Section 8 reading as follows:

"Section 8. All penalties, fines, forfeitures or penal offenses provided in this Act, as to the same offense, shall be cumulative of one another and of any other fines, penalties, forfeitures or penal offenses provided by any other law of this State applicable to such offense.

"Should any such fines, penalties, forfeitures, or penal offenses be in conflict so that such could not be cumulative as above provided, then that law or part of the law containing the provision for the highest penalty in dollars shall be effective and apply as to each such offense,

and that law or part of the law containing the provision for the highest fine in dollars, (where a fine alone is provided for,) shall be effective and apply to each such offense, and in case of forfeiture that law or part of the law containing a provision for the most onerous forfeiture shall be effective and apply to each such offense, and in case of penal offenses containing a provision providing for imprisonment, that law or part of the law containing the provision for the longest maximum imprisonment shall be effective and apply to each such offense; and in each such instance, the lesser fine, penalty, forfeiture, penal offense or punishment shall be suspended."

The amendment was adopted.

Senator Van Zandt offered the following amendment to the bill:

(21)

Amend committee substitute for H. B. No. 8, mimeograph copy, page 169, by striking out the word "as" in line 11 and by striking out the word "of" in line 12, and inserting in lieu thereof "from September 1, 1937 to" and by adding at the end of line 12 the following: "as certified by the State Board of Trustees of the Teacher Retirement System."

The amendment was adopted.

Senator Moore offered the following amendment to the bill:

(22)

Amend H. B. No. 8, Article II, Section 1, subdivision (1), page 4, by striking out the fourth, fifth, and sixth lines on such page and inserting in lieu thereof the following:

"thereof; (b) repressuring; (c) lifting oil; and (d) gas lawfully vented or flared in connection with the production of oil; provided that if any product or thing is extracted from such gas before it is injected into the earth, such gas injected into the earth shall not be excluded in computing the tax due."

Question—Shall the amendment be adopted?

Recess

Senator Metcalfe moved that the Senate recess to 2:00 o'clock p. m. today.

The motion prevailed; and the Senate, accordingly, at 12:10 o'clock p. m. took recess to 2:00 o'clock p. m. today.

### Afternoon Session

The President called the Senate to order at 2:00 o'clock p. m.

### Message from the Governor

The President laid before the Senate and had read the following message from the Governor, which was then referred to the Committee on Nominations of the Governor:

Austin, Texas,  
April 22, 1941.

To the Senate of the Forty-seventh Legislature:

I am again asking your advice concerning the appointment of B. D. Battle of Longview, Texas, as State Auditor and Efficiency Expert.

Previously I submitted his name to you, but because of reports disputing his residence as being in Texas, I withdrew his name and asked Attorney General Mann for his legal opinion on Mr. Battle's residence.

Attorney General Mann's answer is attached hereto for your information. His letter states that he cannot give me an opinion on the question.

From the facts presented to me by Mr. Battle there is no doubt in my mind but what he is a legal resident of Texas and has been continuously for many years. The ten facts furnished by Mr. Battle are as follows:

1. Affidavit of B. D. Battle in which he certifies that in 1932 he did come into and did become a permanent resident of Longview, Gregg County, Texas; that he obtained by reciprocity from the Texas Board of Public Accountants a certificate to practice his profession of accounting in Texas; that in 1932 he was appointed Assistant County Auditor of Gregg County and served as such until October 1, 1939; that since October 1, 1939, he has continued to reside and practice his profession in Longview, Texas.

2. Receipt for American Legion dues for 1941, to Post No. 140, Longview, Texas (Paid 8-24-40).

3. Letters from R. S. Wyche, County Auditor, Longview, Texas, to Senator Joe Hill, dated April 5, 1941, recommending confirmation of Mr. Battle, stating Mr. Battle was his assistant from 1932 to 1939; that since 1939 Mr. Battle has conducted an accounting office in Longview; and expressing his opinion of Mr. Battle's qualifications to be State Auditor.

4. Letter from J. C. Barton, Vice President, and J. W. McDavid, Cashier, First National Bank, Longview, Texas, dated April 5, 1941, stating their opinion of Mr. Battle's character and ability, and that since December 14, 1933, he has been a customer of the bank and maintained an active checking account; that he practices his profession in Longview.

5. Letter from Floyd Covington, Assistant Manager, Longview Chamber of Commerce, to Senator Joe Hill, recommending Mr. Battle and stating that he has been an active member of the local Chamber of Commerce for many years.

6. Certificate by Mann Fuller, Tax Assessor-Collector, Gregg County, Texas, dated April 3, 1941, stating that B. D. Battle has been a legal resident and qualified voter of Gregg County, Texas, since 1933.

7. Certificate by Sheriff of Gregg County, Texas, that he has summoned Mr. Battle for jury service between 1934 and 1940.

8. Poll tax receipt for 1940 dated 1-31-41, issued to "B. D. Battle, 203 East College, Longview, Texas" by Mann Fuller, Assessor-Collector of Taxes, Gregg County, Texas.

9. Three commissions to Mr. Battle as Notary Public in and for Gregg County, Texas, for the terms ending June 1, 1937, June 1, 1939, and June 1, 1941, respectively.

10. Declaration by Buford D. Battle of intention to study law, filed with the Supreme Court of Texas, December 15, 1939, in which he states his permanent address to be Longview, Texas.

I believe Mr. Battle is highly qualified for this position, but of course, I would not, under any circumstances, want to appoint him if he is not a citizen of Texas.

I am, therefore, submitting his name contingent upon your decision as to his place of residence. If you decide he is a legal resident of Texas, I ask your advice and consent to his appointment as State Auditor and Efficiency Expert, term expiring September 13, 1941. If you decide he is not a legal resident of Texas, I ask that you do not confirm his appointment.

Respectfully submitted,

W. LEE O'DANIEL,  
Governor of Texas.

OFFICE OF THE  
ATTORNEY GENERAL OF TEXAS  
Austin

Hon. W. Lee O'Daniel,  
Governor of Texas,  
Austin, Texas.

Dear Sir:

Opinion No. 0-3382  
Re: Citizenship of B. D. Battle

Your letter of April 8, 1941, requests the opinion of this department upon the question whether, under the material submitted with your request, Mr. Battle is a resident citizen of the State of Texas. Your request does not ask that we give this opinion upon the information submitted with your letter alone, but asks that we base it on these facts "and other facts which you may find."

State citizenship is governed by the provisions of the United States Constitution, Amendment 14, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Assuming Mr. Battle to be a citizen of the United States, his State citizenship depends upon his residence. The term "residence" has reference to the "domicile" or "legal residence" of the person; observing the distinction between actual residence and domicile stated by our Supreme Court in the case of *Pecos, etc. Ry. Co. vs. Thompson*, 106 Tex. 460, 167 S. W. 801:

"Residence means living in a particular locality, but domicile means living in that locality with the intent to make it a fixed and permanent home. Residence simply requires bodily presence, as an inhabitant in a given place, while domicile requires bodily presence in that place and also one's intention to make it one's domicile."

Two things must concur to constitute "domicile;" First, residence; and second, the intention of making the place of residence one's home. 15 Tex. Jur. 709. Thus a domicile once acquired is not lost simply by the acquisition of a new residence; the acquisition of the new residence must be accompanied by the intention to make it one's fixed and permanent home. *Hardy vs. DeLeon* 5 Tex. 211; *Holliman vs. Peebles*, 1 Tex. 673.

Since the fact of residence plus the factor of intention are necessary to the determination of the question of domicile, it is obvious that the issue with respect to each particular case can be resolved only in view of all the facts of the particular case. The solution of the problem will not depend upon any single circumstance or group of circumstances but upon all the circumstances taken in connection with each other. In instances where the elements of residence and intention gathered from conduct are ambiguous or uncertain, it becomes necessary to make a minute inquiry into the habits, character, pursuits, social and domestic relations, business and political affairs of the person. 19 Corpus Juris p. 435. In the case of a single person, ordinarily it is a fair presumption of fact and law that the place at which a person actually lives is his domicile, such presumption being of course rebuttable. *Russell's Heirs vs. Randolph*, 11 Tex. 460; 15 Tex. 718; 19 Corpus Juris 431. In the case of a married man, the presumption is that his domicile is where his wife resides, but this presumption will likewise yield to a contrary showing of the facts. *Fidelity and Deposit Company of Maryland vs. First National Bank*, 113 S. W. (2d) 622; *Stranton vs. Hall* 90 S. W. (2d) 865; *Hennessey vs. Campbell* 32 S. W. (2d) 390; *Devereaux vs. Rowe* 293 S. W. 207; 17 Am. Jur. p. 639; 9 R. C. L. pp. 557-558.

With your letter you submit the following material:

1. Affidavit of B. D. Battle in which he certifies that in 1932 he did come into and did become a permanent resident of Longview, Gregg County, Texas; that he obtained reciprocity from the Texas Board of Public Accountants a certificate to practice his profession of accounting in Texas; that in 1932 he was appointed Assistant County Auditor of Gregg County and served as such until October 1, 1939; that since October 1, 1939, he has continued to reside and practice his profession in Longview, Texas.

2. Receipt for American Legion dues for 1941, to Post No. 140, Longview, Texas (paid 8-24-40).

3. Letter from R. S. Wyche, County Auditor, Longview, Texas, to Senator Joe Hill, dated April 5, 1941, recommending confirmation of Mr. Battle, stating Mr. Battle was his

assistant from 1932 to 1939; that since 1939 Mr. Battle has conducted an accounting office in Longview; and expressing his opinion of Mr. Battle's qualifications to be State Auditor.

4. Letter from J. C. Barton, Vice President, and J. W. McDavid, Cashier, First National Bank, Longview, Texas, dated April 5, 1941, stating their opinions of Mr. Battle's character and ability, and that since December 14, 1933, he has been a customer of the bank and maintained an active checking account; that he practices his profession in Longview.

5. Letter from Floyd Covington, Assistant Manager, Longview Chamber of Commerce, to Senator Joe Hill, recommending Mr. Battle and stating that he has been an active member of the local Chamber of Commerce for many years.

6. Certificate by Mann Fuller, Tax Assessor-Collector, Gregg County, Texas, dated April 3, 1941, stating that B. D. Battle has been a legal resident and qualified voter of Gregg County, Texas, since 1933.

7. Certificate by Sheriff of Gregg County, Texas, that he has summoned Mr. Battle for jury service between 1934 and 1940.

8. Poll tax receipt for 1940 dated 1-31-41, issued to "B. D. Battle, 203 East College, Longview, Texas" by Mann Fuller, Assessor-Collector of Taxes, Gregg County, Texas.

9. Three commissions to Mr. Battle as Notary Public in and for Gregg County, Texas, for the term ending June 1, 1937, June 1, 1939, and June 1, 1941, respectively.

10. Declaration by Buford D. Battle of intention to study law, filed with the Supreme Court of Texas December 15, 1938, in which he states his permanent address to be Longview, Texas.

While the foregoing facts are not fully developed, standing alone they indicate that Mr. Battle is a resident citizen of the State of Texas. However, we are in receipt of the following information contained in a letter to this department from Senator Joe Hill:

"1. Buford D. Battle and wife are living together as man and wife.

"2. The latest City Directory of the City of Shreveport, Louisiana,

carries listing: Battle, Buford D., Certified Public Accountant, 552 Jordan Street, Telephone 4003, residence 257 Rutherford, Telephone 75920.

"3. The listing in January 1st Telephone Directory of the City of Shreveport, Louisiana, gives his office at 257 Rutherford, Telephone No. 71531.

"4. I have a telegram from the Sheriff of Shreveport, Louisiana, dated April 4 as follows: 'Buford D. Battle signed 1939 poll books. Act 374, 1940, cancelling signing poll books for 1940.' (Sgd.) J. H. Flournoy, Sheriff.

"5. I have a telegram from the Tax Assessor in Shreveport, Louisiana, dated April 4, 1941, sent at 8:48 a. m. as follows: 'B. D. Battle listed in January 1st Telephone Directory as being accountant at two fifty-seven Rutherford Street. Mrs. Battle signed application for homestead exemption in this office on April second nineteen forty-one, she being record owner of the home.' (Sgd.) A. G. Hammett, Tax Assessor.

"I am informed that Mr. Battle has a room which he occupies at Longview, Texas, and that he maintains an office there as an accountant. I am also advised that he has paid a poll tax in Gregg County, Texas."

The opinion of the Attorney General can be given on questions of law only. Disputed questions of fact, or mixed questions of law and fact cannot be authoritatively decided by the Attorney General. 6 Corpus Juris. p. 811. The weight of evidence and the credibility of witnesses are not questions to be addressed to or decided by the Attorney General. 6 Corpus Jur. p. 812, Note 78.

It is apparent from what has been stated above that the facts with reference to Mr. Battle's citizenship are disputed. Since this department lacks the authority to decide such disputed issues of fact, or mixed questions of fact and law, we regret that we cannot give you an opinion upon the question presented in your letter.

Yours very truly,

ATTORNEY GENERAL OF TEXAS,

By: R. W. Fairchild, Assistant.

Approved April 17, 1941.

GROVER SELLERS, First  
Assistant Attorney General.

RWF:ej

### Committee Substitute House Bill 8 on Passage to Third Reading

The Senate resumed consideration of C. S. H. B. No. 8 on its passage to third reading; with amendment (22) by Senator Moore pending.

The amendment was adopted.

Senator Shivers offered the following amendment to the bill:

(23)

Amend Section 1, Article XIX of H. B. No. 8, by inserting between the words "for" and "sale" appearing in line 5 of subsection (f), page 95, the words "the purpose of making a first."

The amendment was adopted.

Senator Shivers offered the following amendment to the bill:

(24)

Amend Section 25, Article XIX of H. B. No. 8 by adding to the last paragraph thereof, the following:

"The said allocation provision shall be effective and remain in force subject to further allocation or appropriation by the General or any Special Appropriation Bill."

The amendment was adopted.

Senator Shivers offered the following amendment to the bill:

(25)

Amend Section 30, Article XIX of H. B. No. 8 by striking out the words "Article X of this Act" as they appear in the first line of said Section on page 164, and inserting in lieu thereof the words, "This Article."

The amendment was adopted.

Senator Van Zandt offered the following amendment to the bill:

(26)

Amend Article X of the mimeographed copy of C. S. H. B. No. 8 by adding to Section (f) thereof the following:

"Providing however, this Article shall not apply to corporations organized under the Electric Cooperative Corporation Act. Provided however, that this Article does not amend, alter or change in anywise any provision of Chapter 86, p. 161, Forty-fifth Legislature, Acts 1937."

The amendment was adopted.

Senator Weinert moved that the amendments to the bill be offered Article by Article.

The motion prevailed.

Senator Metcalfe offered the following amendment to the bill:

(27)

Amend substitute for H. B. No. 8, page 1, of the mimeographed copy, Section 2, Article I, by striking out Section 2, and substituting in lieu thereof the following:

"Section 2. (1) There is hereby levied an occupation tax on oil produced within this State of four (4%) per cent of the market value of said oil per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred (100%) per cent of production and exact measurement of contents. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus of premiums or other things of value paid thereof or which such oil will reasonably bring if produced in accordance with laws, rules and regulations of the State of Texas."

METCALFE,  
WINFIELD.

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—23

Aikin	Martin
Beck	Mauritz
Chadick	Moore
Cotten	Ramsey
Fain	Shivers
Graves	Stone
Hill	Sulak
Isbell	Van Zandt
Kelley	Vick
Lanning	Weinert
Lemens	York
Lovelady	

Nays—7

Brownlee	Moffett
Formby	Smith
Hazlewood	Winfield
Metcalfe	

Absent—Excused

Spears

Senator Lovelady offered the following amendment to the bill:

(28)

Amend substitute for H. B. No. 8, page 1, of the mimeographed copy, Section 2, Article 1, by striking out Section 2, and substituting in lieu thereof the following:

"Section 2. (1) There is hereby levied an occupation tax on oil produced within this State of five (5%) per cent of the market value of said oil per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred (100%) per cent of production and exact measurements of contents. Provided, however, that the occupation tax here levied on oil shall never be less than three and one-half (3½) cents per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums or other things of value paid thereof or, which such oil will reasonably bring if produced in accordance with laws, rules, and regulations of the State of Texas."

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—19

Chadick	Ramsey
Cotten	Shivers
Fain	Smith
Hazlewood	Stone
Kelley	Van Zandt
Lemens	Vick
Martin	Weinert
Mauritz	Winfield
Moffett	York
Moore	

Nays—10

Aikin	Hill
Beck	Lanning
Brownlee	Lovelady
Formby	Metcalf
Graves	Sulak

Absent

Isbell

Absent—Excused

Spears

Senator Formby offered the following amendment to the bill:

(29)

Amend substitute for H. B. No. 8, page 1, of the mimeographed copy, Section 2, Article 1, by striking out Section 2, and substituting in lieu thereof the following:

"Section 2. (1) There is hereby levied an occupation tax on oil produced within this State of four and one-half (4½%) per cent of the market value of said oil per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred (100%) per cent of production and exact measurements of contents. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums or other things of value paid thereof or which such oil will reasonably bring if produced in accordance with laws, rules, and regulations of the State of Texas. Provided however, that the occupation tax here levied on oil shall never be less than three and one-half (3½) cents per barrel of forty-two (42) standard gallons."

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—20

Cotten	Moore
Fain	Ramsey
Graves	Shivers
Hazlewood	Smith
Hill	Stone
Kelley	Van Zandt
Lemens	Vick
Martin	Weinert
Mauritz	Winfield
Moffett	York

Nays—9

Aikin	Lanning
Beck	Lovelady
Brownlee	Metcalf
Chadick	Sulak
Formby	

Absent

Isbell

Absent—Excused

Spears

Senator Brownlee offered the following amendment to the bill:

(30)

Amend substitute for H. B. No. 8, page 1, of the mimeographed copy, Section 2, Article 1, by striking out Section 2, and substituting in lieu thereof the following:

"Section 2. (1) There is hereby levied an occupation tax on oil produced within this State of eight (8%) per cent of the market value of said oil per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred (100%) per cent of production and exact measurements of contents. Provided, however, that the occupation tax here levied on oil shall never be less than three and one-half (3½) cents per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums or other things of value paid thereof or, which said oil will reasonably bring if produced in accordance with laws, rules, and regulations of the State of Texas."

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—18

Chadick	Moore
Cotten	Ramsey
Fain	Shivers
Hazlewood	Smith
Isbell	Stone
Kelley	Van Zandt
Martin	Weinert
Mauritz	Winfield
Moffett	York

Nays—12

Aikin	Lanning
Beck	Lemens
Brownlee	Lovelady
Formby	Metcalf
Graves	Sulak
Hill	Vick

Absent—Excused

Spears

Senator Metcalfe offered the following amendment to the bill:

(31)

Amend Committee substitute for H. B. No. 8, page 1, Section 2, subsection 1, by striking out the word and figures, "four (4)" and substitute therefor the words and figures, "four and one-quarter (4¼)"

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

Yeas—17

Chadick	Shivers
Cotten	Smith
Fain	Stone
Hazlewood	Van Zandt
Kelley	Vick
Martin	Weinert
Moffett	Winfield
Moore	York
Ramsey	

Nays—13

Aikin	Lanning
Beck	Lemens
Brownlee	Lovelady
Formby	Mauritz
Graves	Metcalf
Hill	Sulak
Isbell	

Absent—Excused

Spears

Senator Lovelady offered the following amendment to the bill:

(32)

Amend substitute for H. B. No. 8, by adding a new Article in the mimeographed copy to be known as Article Ia, after Article I, to read as follows:

"ARTICLE Ia

"Section 1. Every individual, company, corporation, partnership or association, or the receiver or legal representative thereof, owning, operating, managing or controlling any oil pipe line, oil pipe line company, common carrier pipe line or common carrier pipe line company of any kind or character whatsoever, engaged in the transportation of oil or any other petroleum product, other than gas, doing business wholly or in part within this State, whether incorporated under the laws of this State, or



of any other state, territory or foreign country, or unincorporated, and every other individual, company, corporation, partnership or association or the receiver or legal representative thereof doing business of the same kind or character in this State in the transportation of oil and/or petroleum products other than gas by pipe line and making a charge or charges for said transportation by pipe line, whether said charge or charges be made to the public generally or to parties who use said pipe line paying a charge for same, or whether said charge or charges be made to individuals, companies, corporations, partnerships or associations or the receiver or legal representatives thereof owning, operating or controlling said pipe line; shall make quarterly on the first days of January, April, July and October of each year a report to the State Comptroller of Public Accounts of Texas, under oath of the individual or of the president, treasurer or superintendent of such company, corporation, partnership or association or of the receiver or legal representative thereof, showing the gross amount received by said individual, company, corporation, partnership or association or the receiver or legal representative thereof from all business done within this State during the next preceding quarter in payment of charges for the use of said oil pipe line or common carrier pipe line, whether said charges were received from the public generally or from persons who used said oil pipe line or common carrier pipe line or from individuals, companies, corporations, partnerships or associations or the receiver or legal representatives thereof, owning, operating or controlling said oil pipe line or common carrier pipe line. Said individuals, companies, corporations, partnerships or associations or the receiver or legal representative thereof, at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date, equal to two (2%) per cent of said gross receipts, as shown in said report.

"Sec. 2. The State Comptroller of Public Accounts shall have the power and authority to make such rules and regulations as he may deem necessary for the proper enforcement of this Act, and shall prepare such forms and require such reports as he may

deem proper to enable him to perform the duties herein imposed upon him.

"Every individual, company, corporation, partnership or association or the receiver or legal representative thereof, subject to the tax herein imposed shall keep such books of accounts and records of receipts as may be prescribed by the State Comptroller of Public Accounts and shall preserve said books of accounts and records for a period of twenty-four months from and after the gross receipts shown by same shall have been reported to the State Comptroller of Public Accounts and the tax imposed in this Act thereon shall have been paid.

"Sec. 3. The State Comptroller of Public Accounts shall have the power and authority to employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of owners, operators and managers of oil pipe lines and common carrier pipe lines to determine whether the reports herein required are being properly made and the tax herein imposed is being properly paid. He shall have the power and authority to enter upon the premises of any taxpayer liable or to be liable under this Act and any other premises necessary in determining the correct tax liability under this Act; and to examine, or cause to be examined, any books, or records of any person, subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law. Before any division or allotment of the occupation tax levied and collected under the provisions of this Act is made, one-half ( $\frac{1}{2}$ ) of one per cent of the gross amount of said tax shall be set aside in the Treasury for the use of the State Comptroller of Public Accounts in the administration and enforcement of the provisions of this Act; and so much of the said proceeds of one-half ( $\frac{1}{2}$ ) of one per cent of the occupation tax paid quarterly as may be needed in such administration and enforcement is hereby appropriated for such purpose.

"Sec. 4. In the event any individual, company, corporation, partnership or association or the receiver or legal representative thereof, en-

gaged in the business of owning, operating, managing or controlling any oil pipe line or common carrier pipe line in this State shall become delinquent in the payment of the proper taxes as herein imposed, or shall fail or refuse to file the required reports with the State Comptroller of Public Accounts, or who shall willfully fail or refuse to comply with any rule or regulation of the State Comptroller of Public Accounts as promulgated hereunder, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such individual, company, corporation, partnership or association or the receiver or legal representative thereof from further engaging in the business of operating an oil pipe line or common carrier pipe line in the State of Texas until the delinquent tax is paid or said reports are filed or said rule or regulation of the State Comptroller of Public Accounts is complied with, and the venue of any such suit for injunction shall be and is hereby fixed in Travis County.

"Sec. 5. If any person shall violate any of the provisions of this Act, he shall forfeit to the State of Texas as a penalty not less than One Hundred (\$100.00) Dollars for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay the proper tax when same is due, he shall forfeit then (10%) per cent thereof as a penalty. Delinquent taxes and penalties shall draw interest at the rate of six (6%) per cent per annum from the date that they are due until paid. The State of Texas shall have a prior lien for all delinquent taxes, penalties, and interest against all of the property and equipment used and useful to the owner or operator of said oil pipe line or common carrier pipe line in said business of operating an oil pipe line or common carrier pipe line so delinquent, and the Attorney General shall file suit in the name of the State of Texas and against said delinquent owner or operator of an oil pipe line or common carrier pipe line for all delinquent taxes, penalties and interest and any and all other amounts due, and for the enforcement of all liens under this Act: and the venue of any such suit shall be and is hereby fixed in Travis County.

"Sec. 6. Whoever shall, as an owner, operator or manager of any oil pipe line or common carrier pipe line

or as a receiver or legal representative thereof, who is liable under this Act to make reports of the gross receipts of said business; knowingly make any false entries or fail to make any proper entries in the books required by this Act with intent to defraud the State; or whoever shall, as such, knowingly make a false or incomplete report as required by the provisions of this Act; or whoever, as such, shall knowingly fail or refuse to make the report required to make; or whoever, as such, shall destroy, mutilate or secrete any of the records required to be kept by the provisions of this Act; or whoever, as such, shall hide or secrete, with intent to defraud the State, any of the property upon which a lien is created in favor of the State of Texas herein, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum of not less than One Hundred (\$100.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or be confined in the county jail not more than twelve (12) months, or by both such fine and imprisonment.

"In addition thereto such owner, operator or manager of an oil pipe line or common carrier pipe line shall forfeit to the State of Texas, for any said offense or the violation of any of the provisions hereof, or of any rule or regulation, or requirement of the State Comptroller of Public Accounts, a penalty of One Thousand (\$1,000.00) Dollars, for each of such offense, to be recovered by the Attorney General in a civil suit in the name of the State of Texas; and the venue of such suit shall be and is hereby fixed in Travis County; and such suit may be brought separately or joined and made a part of any one civil suit provided for in this Act. The penalties prescribed in this Section, both criminal and civil, are in addition to any and all other penalties prescribed in this Act and by law.

"Sec. 7. Article 7116 of the Revised Civil Statutes of Texas, 1925, as amended, and all other laws and parts of laws in conflict with this Act are hereby expressly repealed.

"Sec. 8. If any Section, paragraph, sentence, clause, phrase or word of this Article is held by any court to be invalid or unconstitutional for any reason, said decision shall not affect the remaining portions of this Article. and the Legislature hereby declares that it would have passed this Article

and every Section, paragraph, sentence, clause, phrase and word thereof had it not contained said Section, paragraph, sentence, clause, phrase or word held to be invalid or unconstitutional."

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table prevailed by the following vote:

## Yeas—17

Beck	Ramsey
Chadick	Shivers
Fain	Smith
Hazlewood	Stone
Kelley	Van Zandt
Martin	Weinert
Mauritz	Winfield
Moore	York

## Nays—12

Aikin	Lanning
Brownlee	Lemens
Cotten	Lovelady
Formby	Metcalfe
Graves	Sulak
Hill	Vick
Isbell	

## Present—Not Voting

Moffett

## Absent—Excused

Spears

Senator Hill offered the following amendment to the bill:

(33)

Amend H. B. No. 8, page 1, of the mimeographed substitute by striking out Section 2 (1) "There is hereby levied an occupation tax on oil produced within this State of five (5) cents per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred (100%) per cent of production and exact measurements of contents. Provided, however, that the occupation tax herein levied on oil shall be five (5%) per cent of the market value" and thereafter as now written.

HILL,  
AIKIN,  
LOVELADY,  
SULAK.

Senator Moore moved to table the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

## Yeas—15

Cotten	Ramsey
Fain	Shivers
Hazlewood	Smith
Kelley	Stone
Martin	Weinert
Mauritz	Winfield
Moffett	York
Moore	

## Nays—15

Aikin	Lanning
Beck	Lemens
Brownlee	Lovelady
Chadick	Metcalfe
Formby	Sulak
Graves	Van Zandt
Hill	Vick
Isbell	

## Absent—Excused

Spears

The question then recurred on the adoption of the amendment.

Yeas and nays were demanded, and the amendment was lost by the following vote:

## Yeas—13

Aikin	Isbell
Beck	Lanning
Brownlee	Lemens
Chadick	Lovelady
Formby	Metcalfe
Graves	Sulak
Hill	

## Nays—17

Cotten	Shivers
Fain	Smith
Hazlewood	Stone
Kelley	Van Zandt
Martin	Vick
Mauritz	Weinert
Moffett	Winfield
Moore	York
Ramsey	

## Absent—Excused

Spears

Question—Shall the bill be passed to third reading?

**Message from the House**

Mr. Worth Ware, a clerk of the House, was recognized by the President to present the following message:  
Hall of the House of Representatives,  
Austin, Texas,  
April 22, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House as refused to concur in Senate amendments to H. B. No. 373 and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

Respectfully submitted,

E. R. LINDLEY,  
Chief Clerk, House of Representatives.

**Signing of Bills**

The President signed in the presence of the Senate, after their captions had been read, the following enrolled bills:

H. B. No. 205, A bill to be entitled "An Act to amend Section 25, Section 31, Section 32, and Section 65 of H. B. No. 407, Chapter 4, page 602 of the Acts of the Forty-sixth Legislature, Regular Session (1939); defining 'department'; providing a method and manner of issuing receipts and certificates of title when a lien is disclosed thereon, adding subsection (a) under Section 32 as amended, limiting the use of duplicate copies of said receipts and certificates of title; providing for the transfer of the Certificate of Title Section of the Department of Public Safety of the State of Texas to the Highway Department of the State of Texas and designating the same as a division within said department, amending the repealing clause of said Act; and creating an emergency."

H. B. No. 295, A bill to be entitled "An Act amending Section 19, subsection h, of S. B. No. 5, Acts of the Forty-fourth Legislature, Second Called Session, also known as subsection h of Section 19 of Article 3912e, and all amendments to such Act, by adding thereto sub-section h-3 affecting the appointment and salaries of deputies in the offices of district clerks in all counties of two hundred and ninety thousand (290,000) inhabitants and over, and less than three hundred and ninety thou-

sand (390,000) inhabitants, according to the last preceding Federal Census; providing for the method of such appointments and salaries in such counties by the filing of an application with the county judges of such counties; providing for the order of the commissioners' courts of such counties for the payment of said salaries of such deputies out of certain funds of such counties; providing for the oath to be taken by such deputies; providing for the method of discharge or removal of such deputies, and for the increase or decrease of the number of such deputies; providing for the repeal of all laws in conflict herewith; providing for a saving clause; and declaring an emergency."

**Report of Special Committee Relative to State Capitol**

Senator Brownlee, by unanimous consent, submitted at this time the following report:

Austin, Texas  
April 22, 1941

To the Members of the Forty-seventh Legislature:

We, your Joint Committee appointed by virtue of Senate Concurrent Resolution No. 27, consisting of three members of the Senate and three members of the House of Representatives, to investigate the feasibility and probable cost of fireproofing the State Capitol Building, and such other recommendations as the Committee may deem proper, beg leave to respectfully submit the following report:

Your Committee has held a number of hearings at which various architects have testified. Practically all of these architects express identical opinions as to the general condition of the building, as well as the hazards of fire. They all agree that the principal structural elements of the Capitol Building are of fireproof construction as the term is defined today, and that it is only in minor features that the building does not conform to modern fire resistive requirements. They were unanimous in their opinion that the building itself is an excellent building and is fundamentally safe and in fine condition with the exception of a few items. Its stability is not questioned and the building expresses the cultural ideals and aspirations of the State of Texas and possesses

architectural qualities which place it among the outstanding government buildings of the world.

As to the fire hazards, we refer you to the statements hereinafter inserted.

All of the architects who appeared before us had made a study of the report submitted by W. E. Simpson & Company, Engineers, of San Antonio, Texas, and by C. H. Page & Son, in 1939, and all of them showed a remarkable knowledge of the structure of the Capitol Building. All of them agreed that the accumulation and storage of records in the basement should be absolutely prohibited, and recommended the construction of a new State Office Building with storage space to properly house all the documents and extra files now stored in the basement, or to build an office building and a separate vault building for the housing of these records.

The consensus of opinion was that the greatest fire hazard in the building is the accumulation of these records stored in the basement, which, mostly being of paper, could be easily ignited, and would in themselves cause the destruction of the building if once a fire was started. They further agreed that the springling system already installed in the basement would damage or destroy practically all of said records in the event the automatic sprinkling system was called into use. Therefore, they all recommended that said records be removed from the basement and placed under a proper filing system in some other building, preferably in a vault built for such purpose. It was further recommended that as many separate fire-proof containers or filing cases as possible be installed even in the event of such removal, so that if a part of said records were ignited, only those records contained in that separate compartment would be destroyed, and the remainder would be protected.

The idea was suggested that in the event of the removal of the records and archives, as above stated, that with modern air-conditioning and lighting systems, the space used by them could be made available for additional office space.

The following pages contain suggestions and recommendations given

to the Committee by architects who appeared before the Committee and discussed with them the problems set forth in S. C. R. No. 27:

#### Report of Mr. Busi Jessen

"In reviewing a building survey report on the Texas State Capitol, prepared by W. E. Simpson & Co. of San Antonio in 1938-1939, it was pointed out to the joint Committee of Senate and House that with the exception of the condition of the electric wiring and the roof construction, the building is fireproof. It was further pointed out that except for minor weaknesses in the roof construction the building is structurally sound.

"At that time it was recommended to the committee that the work of replacing the roof and rewiring the building should be done, along with replacement of the plaster ceilings which are now on wood lath.

"In the event of the installation of new wiring system and new ceilings it would seem advisable to consider the installation of mezzanine floors to provide additional office space. The installation of the wiring system would necessarily mean a certain amount of ceiling and wall renovation and repair. Since the structure of the building is sound and sufficient to carry additional floors, it would seem an economical measure to install the mezzanine areas. These areas could be serviced by stairs from the office areas below. The main corridors and stairs would remain as they are. Along this premise, it would be advisable to investigate additional elevator service to accommodate the added office space.

"There is also a large amount of space in the main roof areas running north and south that could be converted into offices. This would require the installation of windows in the outside walls and the addition of structural steel members to carry the weight of the new fifth floor. This area could be reached by stairs from the fourth floor and possibly directly by elevators.

"It would be impossible to estimate without further survey how much additional office space would be gained by the installation of mezzanines and a new fifth floor, but it would undoubtedly be a worth-

while addition. The chief problem would be to study the circulation and access to and between the mezzanines and the present floors.

"It will be interesting to note that the renovation suggested in the survey by W. E. Simpson Co. necessitates work that would be correlated to the additional work here suggested, since the areas in which the work would be done are the same. Hence, the mezzanines could be installed along with the work of wall and ceiling repair, and rewiring of the offices; the fifth floor could be installed along with the construction of the new roof."

Report of Mr. Edwin Kreisle, of  
Kreisle and Brooks

"As per your request of April 1, 1941, regarding the recommendations for fire-proofing the State Capitol Building, I will say that I have made a careful inspection of the building and find the following:

"There has been installed in the basement of the entire building a sprinkler system; and over the balance of the building an electric fire alarm system has been installed. Although the building is of semi fire-proof construction, I find the following hazards:

1. The steel beams supporting the first floor of the building are exposed underneath and if subjected to extreme heat they would buckle and let the masonry arched constructed floor fall out.

2. Over the balance of the building the floor construction is the same and the only protection that these steel beams have is the plaster over wooden framing.

3. With the exception of glass ceilings in some places, the entire building is ceiled overhead with plaster on wooden lath.

4. The roof of the building is formed of wooden sheathing over wood joist construction to which has been secured the copper roofing, which is perhaps, with the exception of the unprotected beams of the basement over which so much combustible material has been stored, the most dangerous hazard of the building, as this exposes the structure to danger from fire by lightning and overheated electric wires.

5. Quite a number of inside partitions of wood have been installed

since the original building was built, all of which are very combustible.

6. All inside trim of the building is of combustible wood.

7. All inside doors are of wood and glass which would easily permit the rapid spread of fire from one room to another.

8. All exterior windows and window frames are of wooden construction.

9. Most of the furniture and cabinets of the present structure are of wood and are highly combustible.

10. The wiring system was installed after the original building was built and it is far from being safe and of such type as would not be permitted in the most modest structure being built today. Although some of the wiring is in conduit and in gas pipes, quite a bit of it is run in the open. Overheated wires are a most common cause of fires, particularly in attics.

"The following suggestions are made as methods of eliminating the hazards in the order listed above:

1. The unprotected steel beams in the basement could be fireproofed by enclosing in masonry, such as terra cotta, and all combustible materials now stored in the basement should be removed and stored in fire-proof vaults.

2. The plaster over wooden frames around the steel beams of the balance of the building should be removed and these beams enclosed in masonry, plastered over.

3. All present plastered ceilings of the building should be removed and re-plastered with a modern type of cement plaster over metal lath.

4. The present wooden roof sheathing and wooden joist construction of the roof should be removed and be replaced with a fire-proof type of steel and gyp block or other type of fire-proof sheathing over which a new roof should be laid.

Note: The present copper roofing of the building is practically all the same metal that was originally applied over the building. At one time a few years ago it was removed and reversed so as to expose a fresh copper surface to the elements but this roofing material has disintegrated at places and there are quite a number of leaks.

5. All interior wooden partitions should be removed and be replaced with metal partitions.

6. It would be very improbable that the inside trim of this building would be removed, as it is of a very ornate type and I feel that it would be a very unwise thing to attempt to do anything about this trim.

7. Interior doors could be removed and be replaced with metal fire-proof doors.

8. The present wooden windows and window frames are no great fire risk as there are no buildings very close to this structure from which fire could spread to this building; and it would be improbable that anything would be done in regard to the present windows and window frames.

9. The present wooden furniture and cabinets of the building should be changed to metal fire-proof type cabinets and all records which are not being used immediately in the offices should be removed and replaced in a vault of fire-proof construction containing individual metal fire-proof cabinets.

10. The electric wiring system of the entire building should be replaced with wiring to meet the rules of the National Board of Fire Underwriters and the ordinances of the City of Austin governing the installation of same.

"Another suggestion for further fire-proofing the building would be the addition of adequate fire extinguishers placed at strategic locations throughout the building.

"Thank you for the opportunity of appearing before your Committee and I hope that the suggestions above offered may prove of some assistance to you in working out your problems."

#### Report of C. H. Page & Son

"At the request of the committee, I am delivering a set of photostats and blue prints which contain information of the various rooms of the Capitol Building. This is a portion of the report submitted by C. H. Page & Son, and W. E. Simpson & Company, Engineers, San Antonio, made in 1939.

"The building as it stands is fundamentally safe and in excellent condition with the exception of a few items.

"The roof being the most conspicuous in its need for repair and revision as to the materials now in use. Another point of obvious hazard is the present condition of the basement, that being brought by the use rather than its construction. Other items of repair as brought out in our report would be desirable, but at this time we do not think that these are necessarily imperative. May I refer you to our report for a more detailed indication of the extent of the work to be done on the roof, roof skylights, and work in the basement, etc

"May I call your attention to Page 233, of the Eleventh Biennial Appropriation Budget, State of Texas, Forty-seventh Legislature and to the amount of monies that have been requested by the Board of Control. These monies would probably have to be increased to an extent of ten to twelve per cent, owing to the advance of material and labor prices.

"It is our desire for you to use along with this letter the report of the building as a more detailed reference.

"I have investigated this building from start to finish. What we really need is a State Office Building with storage space to properly house all the documents and extra files now stored in the basement, or to build an office building and a separate vault building for housing of the records.

"We thank the committee for the privilege of having been of service in this matter and if we may be of further service, please call upon us."

#### Report of Mr. H. F. Kuehne

"Pursuant to your request, I beg to submit the following observations concerning the matter of fireproofing the State Capitol Building as provided in S. C. R. No. 27.

"Before making any specific recommendations, I wish to make a few general statements concerning this building. The State Capitol Building as it stands today should be classified as a semi-fireproof building. The principal structural elements are of fireproof construction as the term is defined today and it is only in minor features that the building does not conform to modern fire-resistive requirements. The stability of the building is not questioned and it



stands today as a monument to the thoroughness of the Capitol Building Commission which was entrusted with the task of erecting this great structure.

"It is the general attitude of the citizens of Texas that this building should express the cultural ideals and aspirations of this great State and should be preserved to endure for all time. Culturally and esthetically the interior of the building was never completed as no scheme of interior decoration was carried out, however, the building in its present condition possesses architectural qualities which places it among the outstanding buildings in this and all other countries.

"Previous surveys of the condition of the building have disclosed its soundness and stability with respect to foundations and major structural elements, but have pointed out the necessity of certain repairs and renovations as well as general re-decoration and refinishing which might be done to enhance the beauty and add to the life of the building. These reports were not concerned primarily with the fireproofing of the building but rather with the general renovation and refinishing of the building as a whole.

"With respect to the question of fireproofing the building and the degree of the present hazards affecting the building, I would say that the external hazards are practically nil. The building is surrounded by sufficient open spaces to preclude the possibility of any fire hazards from exterior sources. The principal fire hazard is from within and concerns the conditions of the building in certain portions of the structure itself. Owing to the ever expanding functions of the government and the increasing personnel requirements, many interior changes have been made involving the construction of temporary non-fireproof partitions, walls, etc. The constant accumulation of documents, files, archives, and other material has filled portions of the building with decided fire hazards. The use of wood lath in the original plastering in the building and certain wood construction in the roofs over the House and the Senate Chambers also present definite fire risks. Again the wiring system which was installed subsequent to the completion

of the original building, likewise does not conform to the standards of the National Electrical Code or the National Board of Fire Underwriters. The existence of wood furniture and of wood floors in individual rooms does not in itself create unnecessary fire hazards; nor does the fact that doors, windows, wainscoting and trim are of wood condemn the building as unsafe.

"Your committee, in arriving at an answer to this problem, will have to distinguish between the question of fireproofing the building only, and the larger question of general repairs, renovating, refinishing and decorating. These also involve the question of the availability of funds with which to accomplish the desired results. In the consideration of these matters, another problem injects itself; viz., the matter of eliminating the congestion in the building and the preservation of the priceless records and archives now stored in the building which would eliminate a great portion of the internal fire hazards now existing.

"To accomplish the foregoing objectives, there results on one hand a limited program involving the question of fireproofing only, another program for the general repairing, refinishing, and decorating of the whole building and a third program of restoring the building to its original purpose, by eliminating the congestion therein and removing the archives and files to other quarters, involving the construction of additional buildings adjacent to the present Capitol for the housing of the over-flow of the many departments of the government and for the preservation and proper care of the archives, records, and historic documents which are now without any protection. The first of these programs, I take it, is the one that this resolution was primarily concerned with and would require the least expenditure of public funds. The second could wait for a more prosperous time when the revenues of the State are in a better condition.

"To accomplish the first of these programs, I would therefore recommend, in the order of their importance and necessity, the following measures:

First: The building should be re-roofed with a new copper roof to insure it against the depreciations



of the weather which results in decay, defacement and hazards to the interior and its contents.

Second: The reconstruction of the roof above both Chambers of the Legislature with proper fireproof materials, installing a new ceiling properly treated for accoustical effects and modern lighting.

Third: All unsound plaster ceilings and walls should be removed and replaced with modern galvanized metal lath and new plaster.

Fourth: The electric wiring system should be entirely overhauled with all wires put into rigid galvanized conduit and concealed and a new distribution system planned.

Fifth: Where special precautions are necessary, the present wood floors should be removed and replaced with terrazzo floors or cement with fire-resistive resilient floor covering.

Sixth: Such portions of the metal work on the dome of the building which show deterioration should be replaced with new metal and all sources of leaks in the dome covering should be repaired.

Seventh: Until such time when the archives and historic documents may be removed from the basement of the building, adequate fire protection by means of sprinklers should be provided.

"The above items represent minimum precautions that may now be taken for insuring maximum fire protection to the structure of the building as well as its contents. If unlimited funds were available, the entire furnishings of the building could be replaced with metal furniture, files, etc., and all wood wainscoting could be removed and replaced with marble, tile, terrazzo, or other fireproof material.

"It is my opinion that the greatest hazards to the building are due to its contents, the over-crowding of the building for offices, storage, and other purposes not originally intended. In addition to the specific items mentioned, the greatest insurance for protection to the building and its legitimate contents would be the erection of an additional building or buildings to provide adequate space for the departments, commissions, and bureaus which now congest the building and particularly to house the invaluable archives, his-

toric documents, and other files which are irreplaceable and whose value cannot be measured in material terms.

"The time allotted for this report does not permit submitting any cost data. This would require a detailed re-survey of the building to ascertain the quantities involved in the work suggested and evaluating these in terms of current prices for labor and material, which is higher at this time than when previous estimates were made.

"I trust that this brief statement in a measure will enable your committee to arrive at such recommendations as it may deem proper to make to the Legislature.

"Thanking you for the opportunity of submitting these recommendations and placing myself at your disposal for any further and more detailed information which you may desire, I am—"

Report of Mr. Bertram Giesecke,  
of Giesecke & Harris

"After receiving your invitation to appear before the Joint Committee investigating the feasibility and necessity of 'fireproofing' the Capitol Building, I reviewed our file on facts developed some fifteen years ago when we had been requested by the State Board of Control to make a study of the repairs which the Capitol Building needed at the time.

"That former study, together with more recent investigations, convinces us that the proper protection of the Capitol Building can more practically be assured by preventive means rather than by any effort at so-called 'fireproofing.'

"It must be remembered that buildings are generally destroyed by a fire originating in the contents of the building and but seldom by a fire originating in the actual construction of the building itself.

"It must further be remembered that the term 'fireproof' is but a relative term and refers more to the fact that a so-called fireproof building will not of itself burn rather than that the building cannot be destroyed by a fire of its contents.

"We would recommend that the cast iron columns in the basement be protected against fire by being

covered with at least two inches of concrete 'fireproofing.'

"Further, that the steel beams of the First Floor (which form the ceiling construction of the basement) and which support the arched masonry floor construction, be protected by applying a metal lath and plaster ceiling directly to the underside of that beam construction.

"Further in this respect we will recommend removing the present fire hazards from the basement, that is, removing all surplus records storage, furniture storage, and so on from the basement areas. If that is done the necessity for protecting the columns and ceiling beams would largely be removed, but it must be remembered that as the years pass, records and furniture would again accumulate in the basement, regardless of regulations which may now be issued, and for that reason we feel that those two fireproofing methods should be followed.

"Under the intense heat which would be built up from a fire of the contents of any room in the basement, the cast iron columns would likely shatter, particularly when hit by water from the fire lines, and the ceiling steel beams would buckle unless protected as we suggest. In other words, serious fire in any one room of the basement under the present unprotected condition of the cast iron columns and steel beams might very likely allow the entire structure over that area to cave in.

"With the exception of minor items here and there about the Building of not enough importance to be specifically mentioned here, we recommend no other fireproofing than that of the basement columns and steel beams.

"From the standpoint of fire prevention, however, we recommend as follows:

1. That very drastic regulations be put into force by the State Board of Control under which the accumulation and storage of records in all basement areas would be absolutely prohibited.

2. A similar prohibition against the use of any basement area for the storage of surplus or discarded furniture.

3. The construction by the State of an adequate, properly constructed, fire-safe type Records Storage Building.

"We feel that this Records Building should definitely be incorporated as a part of the fire prevention program as it will only be through the availability of a proper records storage building that it will be possible to enforce the recommendations outlined above as No. 1 and No. 2. We believe further that the citizens of Texas are entitled to have all records of a public nature stored in a fire-safe building so arranged that the records will not only be protected but that they can be properly indexed and through such indexing, be available for use when needed.

4. It is our understanding that the Capitol Building is now served by one six inch water main which "loops" the building. That main could not possibly furnish an adequate supply of water in case of a major fire. We recommend that the Building should be served by at least a ten inch main coming in from a water line to the north of the Building and a separate and distinct ten inch main coming in from the south side of the Building.

5. We recommend the construction of an underground vault approximately twenty feet x thirty feet entirely separate from the Capitol Building (though it might be connected to the basement by a tunnel), in which pressure pumps should be placed. These pressure pumps to produce the extra pressure needed during a fire. The pumps should be electrically operated but should be provided with an auxiliary Diesel engine power which would automatically pick up in case of a breakdown of the electric power line.

6. The entire attic space of all areas of the Building and the inner surface of the dome should be protected by a sprinkler system similar to that now used in the basement except that there would have to be separate pressure tanks and pumps supplying the water and the pressure for those high systems. This sprinkler system should also be extended into every concealed space such as janitor closet, storage rooms and so on, wherever located.

7. The fire alarm control system located in the basement of the Capitol now stands free in the basement corridor and any person walking through the basement can tamper with it. This control system should be wired off so that there will be

no danger of its being tampered with.

8. If deemed advisable by the Legislature, we would recommend that the State Library be moved out of the Capitol Building. This Library necessarily must be full of books, pamphlets, periodicals, and newspapers, which constantly presents a hazard. By the removal of this Library, one of the principal hazards would be done away with and much needed additional space would be secured.

"It would be possible to combine the Records Storage Building with the Library Building and such a combination would most likely make toward an economical operation of both, since helpers in the Library would normally have the type of training which would be required of record clerks in the records storage building.

"If such a combination building were built, it would of course be necessary that it be built near the Capitol, whereas if a records storage building were built as a separate structure, it could be placed on other State owned grounds some distance from the Capitol, such as the ground the State now owns on East Fifth Street adjacent to the State Pasteur Institute.

9. We believe that if the recommendations here made are followed, the Capitol Building would be well protected and that in the event of a breakout of a fire in any portion of the building, it could quickly be brought under control without any serious loss, and we do not believe that practical consideration would justify any efforts to so-call "fire-proof" the building as a whole.

10. We do feel that if this amount of work is recommended, the Legislature should incorporate some necessary repair work, the major items of which we consider to be as follows:

"a. Re-roofing the building.

"b. Removing the skylight in the roof over both the House and the Senate (these skylights are approximately forty-eight feet x sixty feet)..

"c. Removing the glass from the ceiling of both the House and the Senate and replacing with a sound-quieting material similar to Celotex, which would not only materially les-

sen the reverberation. (noises) in the two Houses but would also have some heat insulating value.

"d. We believe that some form of attic type ventilation should be incorporated in the attic space over both the House and the Senate to prevent 'building up' the heat loads in those attic spaces which now heat up the ceilings and radiate down onto the members and spectators in both the House and Senate.

"e. All electric wiring should be checked as we understand that many of the circuits are 'overloaded,' which brings about overheating of the circuits and this might start a fire in the actual structure.

"If the members of your Committee will refer to Volume 24 of the National Fireproofing Association, they will find a listing of the major Capitol Building fires as follows:

1- 4-04	Iowa	\$ 125,000.00
2-27-04	Wisconsin	275,000.00
9- 1-09	Toronto, Canada	388,000.00
2- 5-11	Missouri	1,000,000.00
3-29-11	New York	5,500,000.00
2- 3-16	Ottawa (Can. Parl Bldg.)	3,000,000.00
1- 3-21	W. Virginia	400,000.00
3- 2-27	W. Va. (temporary)	150,000.00
2-23-29	Kentucky (Old Capitol)	50,112.00
9-28-30	North Dakota	728,000.00
4-25-35	Oregon	1,000,000.00

"According to the value referred to above, in these eleven major fires plus fourteen additional fires in other Capitol Buildings in which the amount of loss was not sufficient to justify tabulation here, the total of the actual physical loss in the twenty-five fires amount to \$11,638,712.00.

"Of that total the sum of \$11,566,000.00 was in buildings where each fire loss amounted to at least \$100,000.00. In other words, most Capitol fires meant a physical loss of at least \$100,000.00.

"Of the twenty-five fires listed in Capitol Buildings the point of origin of the fire was as follows:

5 fires started in record storage areas.

3 fires started in basement service rooms.

3 fires started in closets, lockers or janitor rooms.

2 fires started in reading rooms.

3 fires started in attic spaces.

2 fires started in roof spaces.

Total fires originating in record storage basement rooms, janitor rooms, attic spaces, and roof spaces . . . 18.

2 fires started in building walls or partitions.

5 fires started in other parts of the building.

"From the listing above, it can be seen that if the type of prevention and protection we recommend is given, you will guard against 90% of the possible fires.

"The 'causes' listed for that group of fires is given as follows:

4 from defective wiring.

3 from rubbish and sweepings.

2 from spontaneous ignition (in closets and service spaces).

2 from smoking.

2 from mechanics' carelessness.

6 from 'other known causes.'

6 from 'unknown causes.'

"We would like to call attention to the fact that the losses listed for the twenty-five Capitol Building fires referred to, a total of \$11,640,000.00, covered merely the physical loss of actual buildings or parts of buildings and did not include the loss of State records and other valuable documents, upon which no value could be placed since the actual documents and records were irreplaceable.

"We appreciate having been given the opportunity of trying to be of some little service to your Committee, but we do wish to call attention to the fact that this report necessarily 'touched only the high spots,' and that we believe that you gentlemen understand that before any work is started, a very careful and comprehensive survey should be made as to all phases of the necessary work, and particularly to the details of executing that work.

"If we can be of any further help, please feel free to call upon us. We believe that Texas has one of the most beautiful Capitol Buildings in the Nation, that it is a good build-

ing and that it will serve Texas for many generations and that it is the duty of any Texas citizen who may have some knowledge or experience which might be helpful toward the preservation or protection of that fine building to offer his services."

\* \* \*

Your committee believes from the evidence it has heard that the principal fire hazard comes mostly from the records that are stored in the basement and other parts of the building, but that on the other hand, certain conditions of the building in the structure itself, while being lesser hazards, should be repaired and proper corrections made; that owing to the construction of many temporary non-fireproof partitions, walls, et cetera, and the use of wood lath in the original plastering in the building, and certain wood construction in the roof over the House of Representatives and Senate, and also the wiring system, which was installed subsequent to the completion of the original building, and the existence of certain wood floors in individual rooms, are both unsafe and to a certain extent dangerous from the standpoint of fire.

We recommend that the reports above set out be given careful study by each member of the Legislature, because it is our opinion that they reflect the true conditions of our State Capitol Building.

We wish to express our gratitude to these architects who unselfishly donated their time and study, without pay of any sort, and some of them appeared on several different days, to testify before the committee. All of these architects rendered this service to this Legislature and to their State with the distinct understanding that neither the Legislature nor any department of the State was under any obligation to them in the future.

As to the cost of the suggested repairs, it was estimated that since 1939; when the original Simpson Engineering Company report was made, prices have advanced some ten or twelve per cent, and therefore, if the recommendations in said report are carried out, the following figures will be approximately reliable.

A-1	Main Roof Cover .....	\$ 65,875.00	
A-2	Skylight Cover over Library .....	8,966.00	
A-3	Ceilings to House of Representatives and Senate Chamber .....	9,072.00	
			\$ 83,913.00
B-1	Drainage and Downspouts .....	5,060.00	
			5,060.00
C-1	Wiring and Fixtures .....	44,800.00	
C-2	Plumbing .....	16,800.00	
			61,600.00
D-1	All room Repairs .....	287,423.97	
			287,423.97
E-1	Dome Covering .....	47,285.00	
			47,285.00
F-1	Elevators .....	44,800.00	
F-2	Revolving Doors .....	16,800.00	
			61,600.00
G-1	Mural Decoration .....	56,000.00	
			56,000.00
			\$602,881.97

In addition to the above cost, we should take into consideration the cost of converting the storage space, when emptied, into office space. This will require additional investigation, as our time was limited and we have been unable to obtain any authentic approximate estimate. However, it is our opinion that this extra space could be made available at a reasonable cost by the use of modern lighting and air-conditioning systems, together with the required partitions.

Generally, it is the opinion of the committee that the present wooden decorations in the building are not sufficiently hazardous to require their removal, but we believe that they should be retained on account of their architectural beauty, as it was the opinion of all the architects that if the above improvements are made, a fire would be confined to the room where it was started.

Your Committee recommends that appropriate action be taken without delay to correct the above conditions, and especially that the records and archives stored in the basement of the Capitol be removed at the earliest practicable time to some place that is safer for such archives, records and documents. This should be done also from the standpoint of the hazard it creates for the Capitol Build-

ing, the replacement value of which is, according to the lowest estimate by the architects, some Twenty Million (\$20,000,000.00) Dollars. We do not think it is wise to permit such a hazard to remain any longer as it now exists.

Respectfully submitted,

BROWNLEE,  
WINFIELD,  
ISELL,

On the part of the Senate;

SMITH,  
HOBBS,  
GARLAND,

On the part of the House.

Note: We are sending up herewith a number of blueprints and estimates which we recommend be filed with the Board of Control for future reference and use.

#### Request of House Granted for Conference Committee on House Bill 373

Senator Lovelady called up from the President's table, for consideration at this time, the request of the House for a Conference Committee on H. B. No. 373.

Senator Lovelady moved that the request of the House be granted.

The motion prevailed.

## Adjournment

Senator Shivers moved that the Senate adjourn until 10:00 o'clock a. m. tomorrow.

The motion prevailed; and the Senate, accordingly, at 5:35 o'clock p. m., adjourned until 10:00 o'clock a. m. tomorrow.

## FIFTY-NINTH DAY

(Wednesday, April 23, 1941)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Stevenson.

The roll was called, and the following Senators were present:

Aikin	Martin
Beck	Mauritz
Brownlee	Metcalf
Chadick	Moffett
Cotten	Moore
Fain	Ramsey
Formby	Shivers
Graves	Smith
Hazlewood	Stone
Hill	Sulak
Isbell	Van Zandt
Kelley	Vick
Lanning	Weinert
Lemens	Winfield
Lovelady	York

Absent—Excused

Spears

A quorum was announced present.

Rev. S. B. Culpepper, Chaplain, offered the invocation.

On motion of Senator Aikin and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

## Leaves of Absence Granted

Senator Spears was granted leave of absence for today on account of important business, on motion of Senator Graves.

## Report of Standing Committee

Senator Shivers submitted the following report:

Austin, Texas,  
April 22, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: We, your Committee on Oil, Gas and Conservation, to whom was referred

H. B. No. 393, A bill to be entitled "An Act providing that in counties containing a population of not less than eighty-three thousand (83,000) and not more than eighty-three thousand, three hundred and fifty (83,350) as shown by the last preceding Federal Census, and which contain navigation districts, water improvement districts, and water control and improvement districts, the county auditor shall audit books, accounts, records, bills, and warrants of such districts, and other districts created for improvement and conservation purposes which are not administered by the commissioners' court of such counties; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

SHIVERS, Chairman.

## Senate Resolution 105

Senator Metcalfe offered the following resolution:

Whereas, Mrs. Ruth Bratton, sponsor of the Senior Class of the Mason Independent School District, Mason, Texas, is in the Capitol with said Senior Class of 1941; now, therefore, be it

Resolved by the Senate of Texas, That the Senate express its pleasure at having these visitors and extend to Mrs. Bratton and the President of the Senior Class the privileges of the floor for the day; and, be it further

Resolved, That the Secretary of the Senate be directed to deliver a copy of this resolution to Mrs. Ruth Bratton, sponsor of the Senior Class, and to the President of the Senior Class.

METCALFE,  
LOVELADY.

The resolution was read, and on motion of Senator Metcalfe and by unanimous consent, the resolution was considered immediately.

The resolution was adopted.